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14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 SAN FRANCISCO DIVISION

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18 STATE OF CALIFORNIA and GAVIN) Case No. 3:25-cv-03372-JSC
19 NEWSOM, in his official capacity as Governor)
of California,) **DEFENDANTS' SUPPLEMENTAL BRIEF**
20)
Plaintiffs,)
21)
v.)
22)
DONALD J. TRUMP, et al.,)
23)
Defendants.)
24)
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1 The Court should transfer this case—not dismiss it, as plaintiffs requested for the first time at the
 2 May 27, 2025 hearing. To start, in their brief, plaintiffs failed to make this request and argue that their
 3 desire for dismissal could change the “interest of justice” analysis under 28 U.S.C. § 1631. *See* ECF No.
 4 12. That failure means that plaintiffs forfeited their argument for dismissal in lieu of transfer. *Young v.*
 5 *ByteDance Inc.*, 700 F. Supp. 3d 808, 815 (N.D. Cal. 2023) (an argument omitted from an opposition
 6 brief is forfeited).

7 Regardless, courts in the Ninth Circuit “have rarely found that transfer would not serve the
 8 interest of justice” under 28 U.S.C. § 1631. *See Amity Rubberized Pen Co. v. Market Quest Grp. Inc.*,
 9 793 F.3d 991, 996 (9th Cir. 2015). Under section 1631, transfer is “normally” in the interest of justice
 10 because “dismissal of an action that could be brought elsewhere is ‘time-consuming and justice-
 11 defeating.’” *Sec. Alarm Financing Enters., L.P. v. Nebel*, 200 F. Supp. 3d 976, 987 (N.D. Cal. 2016)
 12 (quoting *Miller v. Hambrick*, 905 F.2d 259, 262 (9th Cir. 1990)). It undoubtedly would be time-
 13 consuming for plaintiffs to bring a piecemeal procedural appeal in the Ninth Circuit rather than litigate
 14 on the merits at the Court of International Trade with 12 of their sister states. *See, e.g., Taati v. Cigna*
 15 *Healthcare, Inc.*, 2008 WL 11423917, at *7 (C.D. Cal. Sept. 19, 2008) (finding transfer under section
 16 1631 in the interest of justice to avoid “litigating [claims] piecemeal in two different forums,” which
 17 “would burden” the courts involved). Indeed, where the transferee court is already evaluating
 18 “markedly similar” “factual, legal, and procedural issues,” “transfer, not dismissal, is the preferable
 19 disposition.” *Amerijet Int’l, Inc. v. DHS*, 43 F. Supp. 3d 4, 21 (D.D.C. 2014); *Fitbit, Inc. v. Koninklijke*
 20 *Philips N.V.*, 336 F.R.D. 571, 587 (N.D. Cal. 2020) (explaining that transfer under section 1631 would
 21 “serve the interest of justice” in part because “a related … action between the same parties” had already
 22 been transferred by another judge).

23 In addition, plaintiffs’ desire for an immediate appeal to the Ninth Circuit is not a reason to deny
 24 defendants’ motion based on the interests of justice. Congress determines the jurisdiction of the courts of
 25 appeals, and it decided against making transfer orders immediately appealable. Plaintiffs’ request would
 26 require this Court to hold that the interest-of-justice language in Congress’s transfer statute includes a
 27 judicial determination that the limits Congress placed on appellate jurisdiction are unjust. That sort of
 28 interpretation of section 1631 would defy logic and create a loophole to appellate jurisdiction. And the

1 Ninth Circuit has not held a plaintiff's desire for an appealable judgment relevant to the decision
 2 whether to transfer or dismiss a case. *See Amity*, 793 F.3d at 996. None of this denies plaintiffs review
 3 of the transfer order. As the U.S. District Court for the Northern District of Florida recently recognized
 4 in denying a motion premised on a need for Eleventh Circuit review, "Plaintiffs still have two more bites
 5 at the jurisdictional apple—at the CIT and, if necessary, at the Federal Circuit." *Emily Ley Paper Inc. v.*
 6 *Trump*, No. 3:25-cv-464, 2025 WL 1482363, at *1 (N.D. Fla. May 21, 2025); *see also id.*, 2025 WL
 7 1482771, at *8 n.19 (May 20, 2025).

8 Plus, granting plaintiffs' request to dismiss their case is not likely to have the effect they desire.
 9 An order dismissing a case at a plaintiff's request is not appealable. Plaintiffs' "fundamental motivation
 10 in requesting a dismissal [is] to avoid the effects, and appeal the underlying basis, of an otherwise-
 11 unappealable interlocutory ruling that they [feel] would be damaging to their case: a transfer
 12 order. Courts do not favor this sort of end-run around the final judgment rule to make interlocutory
 13 orders immediately appealable." *Dearth v. Mukasey*, 516 F.3d 413, 416 (6th Cir. 2008) (dismissing an
 14 appeal of an order dismissing a case without prejudice at the plaintiff's request); *accord Hodgkins v.*
 15 *Mukasey*, 271 F. App'x 412, 414 (5th Cir. 2008) (same); *see Concha v. London*, 62 F.3d 1493, 1507 (9th
 16 Cir. 1995) (plaintiffs may not appeal from a voluntary dismissal without prejudice because "[t]he
 17 plaintiff is free to seek an adjudication of the same issue at another time in ... another forum"). In short,
 18 plaintiffs' desire for dismissal and piecemeal appeal circumventing the jurisdictional limits created by
 19 Congress cannot outweigh the Ninth Circuit's strong preference for transfer to a court with
 20 jurisdiction. *Amity*, 793 F.3d at 996.

21 DATED: May 30, 2025

Respectfully submitted,

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